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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/607,126	06/29/2000	David Moy	0064738-0040	8491

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EXAMINER

HENDRICKSON, STUART L

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 04/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

629126

Applicant(s)

Moy

Examiner

Herbison

Group Art Unit

1154

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 8/20/02

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-2, 24-53 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-2, 24-53 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

Art Unit: 1754

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action. The actions mailed 2/22/02 and 10/18/02 are vacated.

Claims 1-22 and 24-53 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-75 of U.S. Patent No. 6221330. Although the conflicting claims are not identical, they are not patentably distinct from each other because using CO as the gas is encompassed by the present claims. Thus, the application claims subject matter which overlaps that of the patent; In re Malagari.

Claims 1, 4-9, 12-14, 17, 19 and 21 are rejected under 35 U.S.C. 102(a) as being anticipated by Sen et al.

This is the same rejection as made in paper 3, incorporated herein by reference.


Claims 1, 4-9, 12-14, 17, 19, 21 and 22 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sen et al.

This is the same rejection made in paper 3, incorporated herein by reference, further noting that the reference teaches varying the ferrocene-benzene concentrations, one can make SWNTs. Thus, the present claims represent an obvious optimization; In re Boesch 205 USPQ 215.

Applicant's arguments filed 8/20/02 have been fully considered but they are not persuasive.

The claims rejected are not limited to the argued diameter. The reference suggests SWNTs. As it is a peer-reviewed article, it is deemed enabled.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (703) 308-2539.



Stuart Hendrickson
examiner Art Unit 1754